

JUDGE COTE

07 CV 6362

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INNOVATIVE USA, INC.,

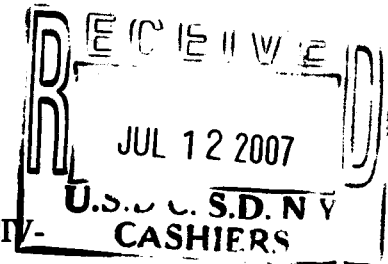
Plaintiff,

v.

STERLING PUBLISHING CO., INC.,

Defendant.

Civil Action No. 00-CV-



COMPLAINT

Plaintiff, Innovative USA, Inc. ("Innovative" or "Plaintiff"), a Connecticut corporation, with its principal place of business at 18 Ann Street, Norwalk, Connecticut, 06854, by and through its attorneys, Hedman & Costigan, P.C., as and for its Complaint against Defendant, Sterling Publishing Co., Inc. ("Sterling" or "Defendant"), alleges as follows:

NATURE OF THE ACTION

1. This case involves patent infringement by the Defendant. Innovative is the sole and exclusive assignee of United States Patent No.: 5,820,383 ('383 patent) to Michael Levins for "MAGNETIC MANIPULATIVES BOOK." Defendant has offered for sale and has sold a book entitled "Magnetic Sudoku by Frank Longo" ("Magnetic Sudoku"), which is covered by the scope of the '383 patent claims. Defendant's sale and offer for sale of the Magnetic Sudoku book infringes Plaintiff's patent rights in the '383 patent.

THE PARTIES

2. Plaintiff Innovative USA, Inc. is a Connecticut corporation, with its principal place of business in Norwalk, Connecticut.

3. On information and belief, Defendant Sterling Publishing Co., Inc. is a corporation organized under the laws of the State of Delaware, having its principal place of business at 387 Park Avenue South, New York, New York 10016. Defendant Sterling Publishing Co. Inc., at all times material hereto, has been registered to do business and has conducted business in the State of New York.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 271, 281, 283-285. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this Court under 28 U.S.C. §§ 1391(b), 1391(c) and/or 1400(b).

BACKGROUND

5. On October 13, 1998, United States Patent No. 5,820,383 patent ("383 patent") was issued for an invention entitled "MAGNETIC MANIPULATIVES BOOK", listing Michael Levins as the inventor. A true and correct copy of the '383 patent is attached hereto as Exhibit "A."

6. The '383 patent is directed to, for example, a book having at least one fold out page with a metal insert which assists the placement or arrangement of magnetic manipulatives onto a page of the book. The '383 patent also is directed to a book which has means for keeping the manipulative pieces from sliding around on a page of the book, such as a magnetic means.

7. Prior to issuance, all right, title and interest in and to the '383 patent was assigned by the inventor to Innovative USA, Inc. Innovative USA, Inc. is the current owner of all right, title and interest in and to the '383 Patent.

8. On information and belief, defendant Sterling has engaged in offering for sale and selling of the book "Magnetic Sodoku by Frank Longo." Sterling's book infringes on the technology claimed in the '383 patent. Specifically, defendant's book includes at least one fold out page with a metal insert, which assists the placement or arrangement of magnetic manipulatives onto a page of the book.

COUNT I

PATENT INFRINGEMENT

9. Paragraphs 1-8 above, inclusive, are hereby incorporated herein by reference.

10. Defendant Sterling has sold or offered to sell, and will continue to sell or offer to sell, a book that infringes each of the elements of one or more claims of the '383 patent, without license from Innovative, in this judicial district and elsewhere throughout the United States.

11. By selling, and/or offering for sale "Magnetic Sodoku," defendant Sterling has directly infringed, and will continue to directly infringe, one or more claims of the '383 patent under 35 U.S.C. § 271 (a) literally and/or under the doctrine of equivalents.

12. On information and belief, Sterling's infringement of the '383 patent has been and continues to be willful and deliberate.

13. As a direct and proximate consequence of the acts and practices of defendant, plaintiff Innovative has been, is being and, unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. § 284.

14. As a direct and proximate consequence of the acts and practices of defendant, defendant also has caused, is causing and, unless such acts and practices are enjoined by the Court, will continue to cause irreparable harm to plaintiff Innovative for which there is no adequate remedy at law, and for which plaintiff is entitled to injunctive relief under 35 U. S. C. § 283.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Innovative prays for the entry of a judgment from this Court:

- a. Declaring that United States Letters Patent 5,820,383 was duly and legally issued, is valid and is enforceable;
- b. Declaring that defendant Sterling has directly infringed one or more claims of the '383 patent;
- c. Declaring that defendant Sterling has willfully infringed one or more claims of the '383 patent;
- d. Deeming this to be an "exceptional" case within the meaning of 35 U.S.C. § 285, entitling plaintiff to an award of its reasonable attorney fees, expenses and costs in this action; and
- e. Permanently enjoining defendant Sterling and its respective officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from committing further acts of infringement under 35 U.S.C. § 271 of any one or more claims of the '383 patent pursuant to 35 U.S.C. § 283;
- f. Awarding plaintiff damages in accordance with 35 U.S.C. § 284;
- g. Awarding plaintiff its costs in connection with this action; and

h. Awarding plaintiff such other and further relief as this Court may deem to be just and proper.

Dated: July 12, 2007

INNOVATIVE USA, INC.

By:  _____

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